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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/633,461	07/31/2003	Keith E. Smith	2003-0017	4665

7590 09/03/2004  
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EXAMINER

CHIN, RANDALL E

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 09/03/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/633,461	Applicant(s) SMITH, KEITH E.	
	Examiner Randall Chin	Art Unit 1744	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>073103 and 121903</u> . | 6) <input checked="" type="checkbox"/> Other: <u>sample reissue oath/dec.</u>          |

***Reissue Applications***

1. It should be noted that it is the Examiner's position that the error arising in claim 1 of U.S. Patent No. 4,926,517 is more than simply a "typographical" error as characterized by Applicant. Applicant's assertion that the term ***first arm*** is interchanged with the term ***second arm*** in three occurrences within claim 1 is more than simply a typographical, editorial or clerical error and therefore there is sufficient grounds for filing the instant reissue application.
2. The reissue oath/declaration filed with this application is defective because it fails to contain the statement required under 37 CFR 1.175(a)(1) as to applicant's belief that the original patent is wholly or partly inoperative or invalid by reason of (1) a defective specification (or drawing) or (2) by reason of the patentee claiming more (or less) than the patentee had a right to claim in the patent. See 37 CFR 1.175(a)(1) and see MPEP § 1414.
3. The reissue oath/declaration filed with this application is defective because it fails to contain a statement that "all errors which are being corrected in the reissue application up to the time of filing of the oath/declaration arose without any deceptive intention on the part of the applicant". See 37 CFR 1.175 and MPEP § 1414. See accompanying sample reissue oath/declaration.

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4. Claims 1-10 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175. The nature of the defect(s) in the oath/declaration is set forth in the discussion above in this Office action.

5. With respect to amended claim 1, Applicant should note that all subject matter being **added** to an original patent claim **must be underlined**. All subject matter being deleted from an original patent claim must be placed between brackets. 37 CFR 1.173(b)(2) and (d).

If a claim is amended during reissue prosecution, a parenthetical expression "(amended)," "(twice amended)," etc., should follow the original claim number. 37 CFR 1.173(b)(2).

Each amendment submission must set forth the status of all patent claims as of the date of the amendment. 37 CFR 1.173 (c).

6. The original patent, or a statement as to loss or inaccessibility of the original patent, must be received before this reissue application can be allowed. See 37 CFR 1.178.

7. Claims 1-10 would be allowed if the above objections are addressed and corrected.

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8. Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The Examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Robert Warden, can be reached at (571) 272-1281. The number for Technology Center 1700 is (571) 272-1700.

The central fax number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



R. Chin



Randall Chin  
Primary Examiner  
Art Unit 1744